

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BYRON SCHAEFER,

Plaintiff,

v.

TARGET CORPORATION,

Respondent.

No. 2:24-cv-00651-DC-SCR

ORDER REGARDING DISCOVERY
DISPUTE

Introduction

The parties presented this dispute to the Court pursuant to the undersigned's informal discovery dispute process. ECF No. 21. Plaintiff seeks the contact information for all witnesses identified in Defendant Target Corporation's ("Target") initial disclosures and for all individuals responsive to an interrogatory Plaintiff served on Target. Defendant resists such disclosures. The Court discussed this dispute with the parties during an informal telephonic hearing on December 5, 2024. At the Court's direction, the parties submitted their meet and confer correspondence in camera, to assist the Court in resolving this dispute. Having now reviewed that correspondence and further considered the issues, the Court finds that Plaintiff is entitled to the requested contact information.

Analysis

Federal Rule of Civil Procedure 26(a)(1)(A) requires a party to disclose "the name and, if

1 known, the address and telephone number of each individual likely to have discoverable
2 information . . . that the disclosing party may use to support its claims or defenses, unless the use
3 would be solely for impeachment[.]” In addition to this initial disclosure requirement, litigants
4 often seek and obtain contact information of other potential witnesses through interrogatories.
5 *See United States v. Real Property Located in Los Angeles, California*, 2024 WL 4002844, at *7-
6 8 (C.D. Cal.) (requiring the disclosure in response to an interrogatory of the “identity of
7 individuals with discoverable information about” an issue in the case because the “contact
8 information for such individuals is properly discoverable”). Target nevertheless argues that
9 Plaintiff is not entitled to the contact information of certain of its employees at the “Team
10 Leader” level and above. Target’s argument is based on two principles: (1) the employees at the
11 “Team Leader” level and above are “managers” who should not be contacted *ex parte*, and (2)
12 Target’s employees have a privacy interest in their contact information.

13 During the informal discovery conference, Plaintiff’s counsel recognized her ethical
14 obligation not to contact *ex parte* witnesses who are represented or who could make vicarious
15 admissions. However, Target’s counsel does not claim to represent the individuals whose contact
16 information Plaintiff seeks. Moreover, given the management structure the parties described to
17 the Court, it is unlikely that Target would be bound the admissions of those individuals. *See Hill*
18 *v. Spiegel, Inc.*, 708 F.2d 233, 237 (6th Cir. 1983) (holding that statements made by mid-level
19 managers who were not involved in decision to discharge plaintiff were not vicarious admissions
20 by employer).

21 As for Target’s privacy argument, it is true that California’s state law privacy protections
22 apply in a diversity case like this one, pursuant to Federal Rule of Evidence 501. *See Hill v.*
23 *Eddie Bauer*, 242 F.R.D. 556, 562 (C.D. Cal. 2007). Under state law, all Californians have a
24 conditional privacy interest in their contact information. *See Williams v. Superior Court*, 3 Cal.
25 5th 531, 552-53 (2017). However, the contact information at issue here can be produced subject
26 to a protective order, thus adequately protecting the privacy interests of the handful of employees
27 whose information would be subject to disclosure. *See, e.g., Holland-Hewitt v. Allstate Life Ins.*
28 *Co.*, 343 F.R.D. 154, 176 (E.D. Cal. 2022) (“[G]iven the presence of the protective order, the

1 Court does not find the privacy concerns outweigh the discoverability of the absent member
2 contact information.”).

3 **Conclusion**

4 For the foregoing reasons, and subject to the following conditions, Target is ORDERED
5 to produce contact information for the individuals identified in its initial disclosures and the
6 individuals identified in response to Plaintiff’s interrogatory. Target may mark this information
7 confidential under the protective order entered in this action. To the extent an individual is
8 represented by counsel for Target, Target may so indicate in its production. To the extent Target
9 has a *bona fide* belief that an individual could make a vicarious admission, Target may so
10 indicate. For individuals who are represented by counsel for Target or who Target believes could
11 make a vicarious admission, Plaintiff’s counsel shall not contact them *ex parte*. Counsel for
12 Target may nonetheless offer to accept service of a deposition notice or subpoena on behalf of
13 any individual identified in its initial disclosures or in response to Plaintiff’s interrogatory.

14 Dated: December 9, 2024

15
16 
17 SEAN C. RIORDAN
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27
28